



U.S. Department of Justice

United States Attorney
Southern District of New York

MEMO ENDORSED

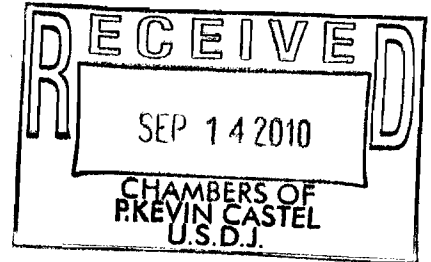
86 Chambers Street, Third Floor
New York, New York 10007

September 14, 2010

BY HAND

Hon. P. Kevin Castel
United States District Judge
500 Pearl Street, Room 2260
New York, NY 10007

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/14/2010



Re: *Riverkeeper, et al. v. EPA*, 06 Civ. 12987 (PKC)

Dear Judge Castel:

I am an Assistant United States Attorney assigned to represent defendant the United States Environmental Protection Agency ("EPA") in the above-referenced action. I write respectfully to advise the Court of a recent development in *ConocoPhillips Co, et al. v. EPA*, 06-60662 (5th Cir.) ("Fifth Circuit proceeding").

As the Court is aware, the Fifth Circuit issued a decision on July 27, 2010 in the Fifth Circuit proceeding, granting the joint motion of EPA and the petitioners, who also are the plaintiffs in this action, seeking remand of the Phase III Rule as it pertains to existing facilities, and affirming the Phase III Rule as it pertains to new facilities. On September 3, 2010, the American Petroleum Institute, an intervenor in the Fifth Circuit proceeding, filed a petition for rehearing, seeking a panel hearing with respect to both parts of the Fifth Circuit's July 27, 2010 decision. A copy of that petition is respectfully enclosed.

In the meantime, as the Court is aware, EPA is in the process of seeking the appropriate approvals for the proposed settlement that EPA had negotiated with plaintiffs. I will, of course, notify the Court promptly if such approvals have been obtained.

*DOJ to AVSA to
Report to
the Court
on or before
November 5,
2010.*
SO ORDERED
9-14-10

I thank the Court for its consideration of the enclosed material.

Respectfully,

PREET BHARARA
United States Attorney

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